

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DAVID E. SALTS**

Claimant

VS.

**IBP, INC.**

Respondent  
Self-Insured

)  
)  
)  
)  
)  
)

Docket No. 169,216

**ORDER**

Claimant appeals from an Award entered by Special Administrative Law Judge Douglas F. Martin on April 23, 1996. Mr. Jeff K. Cooper was appointed Member Pro Tem to act in place of Mr. Gary Korte.

**APPEARANCES**

Chris A. Clements of Wichita, Kansas, appeared on behalf of the claimant. Craig A. Posson of Dakota City, Nebraska, appeared on behalf of the respondent, a self-insured company.

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

**ISSUES**

The Special Administrative Law Judge found that claimant had not given timely written claim as required by K.S.A. 44-520a. The Special Administrative Law Judge also found that claimant had not established that his injury arose out of and in the course of employment. Claimant appeals both of these findings. Claimant also asks that the Appeals Board make findings regarding the nature and extent of the claimant's disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds that the claimant has failed to establish that he made timely written claim, and for that reason benefits must be denied.

Claimant alleges that he injured his back in the course of his employment with the respondent, IBP, Inc., during the period of April 10, 1991 through May 25, 1991. Claimant also alleges that he first made written claim on February 27, 1992. Claimant argues that the written claim was timely because the employer had not filed a report of accident and the time for serving the claim was therefore extended from 200 days to one year pursuant to K.S.A. 1990 Supp. 44-557.

The Appeals Board finds that even if the claimant's alleged date of accident and written claim are accepted as true, the written claim was not timely. K.S.A. 1990 Supp. 44-557 extends time for written claim from 200 days to one year only in cases where the claimant gives timely notice and the respondent then does not file a report of accident. If the employer is not notified of the accident, the employer's failure to file a report of accident does not extend the time for written claim. In this case the evidence establishes that claimant did not give notice of the accident and, in fact notified the respondent that the complaints were not related to work. Claimant was therefore required to serve written claim within 200 days but did not do so. The Appeals Board therefore concludes that the written claim was not timely and benefits must be denied.

**WHEREFORE**, the Appeals Board finds that the decisions by the Special Administrative Law Judge denying benefits for failure to serve timely written claim should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1997.

---

BOARD MEMBER PRO TEM

---

BOARD MEMBER

---

BOARD MEMBER

c: Chris A. Clements, Wichita, KS  
Craig A. Posson, Dakota City, NE  
Douglas F. Martin, Special Administrative Law Judge  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director